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Fifty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*
OF THE 1407th MEETING

Held at Headquarters, New York,
on Monday, 3 April 1995, at 10 a.m.

Chairman: Mr. AGUILAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1407/Add.1.

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The meeting was called to order at 10.20 a.m.

FOLLOW-UP ON VIEWS ADOPTED PURSUANT TO ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE COVENANT (CCPR/C/53/R.1)

1. Mr. MAVROMMATIS, speaking as Special Rapporteur for Follow-up on Views, said that, four years earlier, the Committee had decided to appoint a Special Rapporteur for Follow-up on Views to look into cases on which no action had been taken and send reminders to States parties. After the first two years of the Special Rapporteur's mandate, the Committee had concluded that insufficient progress had been made and had subsequently held two debates on the need for more positive action.

2. The follow-up progress report contained in document CCPR/C/53/R.1, which he had drawn up since his appointment as Special Rapporteur two years earlier, provided succinct information on the details of outstanding cases, all follow-up action, recent developments and recommendations.

3. In the case of Jamaica, the Committee had decided that he should visit Jamaica and meet with its competent authorities in order to ascertain what action they intended to take with regard to the cases on which Jamaica had not yet provided any follow-up. The trip to Jamaica had been scheduled for the week prior to the week that the working groups were to begin work at the Committee's current session. However, the Committee had been informed at the last minute that, owing to the holding in Jamaica of the session of the United Nations Conference on the Law of the Sea, a number of persons would not be available. He had subsequently informed the Jamaican authorities that the most convenient time for rescheduling the trip would be the week before the working groups began work in July 1995 in Geneva. The Jamaican authorities had already responded and informed him that he would be able to visit Jamaica during the week of 25 June 1995.

4. In New York, he had held three meetings with Permanent Representatives. He had met with the Permanent Representative of Zambia to discuss communications Nos. 314/1988 and 326/1988. With regard to communication No. 314/1988, he had been informed that the State party had reached an agreement with the author concerned and that compensation would be paid. With respect to communication No. 326/1988, he had learned that the State party had taken a unilateral decision to compensate the author. The Committee had advised the author to seek compensation. In both cases, the authors had been requested to inform the Committee within two months about what had actually happened. The authors had been informed that, if no information was forthcoming within two months, the cases would be struck from the list.

5. He had also had a very long and extremely interesting meeting with the Permanent Representative of Colombia, who had told him that the Permanent Mission of Colombia would transmit the information it had received from the Committee to the Colombian authorities. He had requested a reply within two months.

6. He had met with the Chargé d'affaires of Suriname to consider eight cases that had been consolidated into one. The Chargé d'affaires of Suriname had assured him that, in spite of tremendous difficulties, Suriname was endeavouring to entrench democracy, and she had ensured him that she would transmit everything to the Suriname authorities.

7. Although his efforts to communicate with the Permanent Representatives of Zaire, Equatorial Guinea and the Central African Republic had been unavailing, he would try to contact them before the Committee's next session.

8. After the list of cases contained in the follow-up progress report had been compiled, the working group had received follow-up material on several cases. With regard to communication No. 172/1984, he had received a submission from the Government indicating that legislative amendments that had entered into force in 1987 and 1991 had offered the author "sufficient satisfaction". Together with the secretariat, he would make a recommendation to the Committee as to whether or not the replies from the State parties had been satisfactory. The submission that had been received would be circulated among the members of the Committee at a later date.

9. Mr. SCHMIDT (Centre for Human Rights) said that the follow-up reply on communication No. 172/1984 had not yet been circulated because it had been submitted in Dutch.

10. Mr. MAVROMMATIS said that, with respect to communication No. 445/1991, the State party had refused to release the authors of the communication, as recommended by the Committee.

11. With regard to communication No. 328/1988, the State party had not replied and he had recommended that if no reply to the follow-up reminder was received from the State party, the case should be taken up with the Permanent Mission of Nicaragua.

12. With regard to communication No. 458/1991, which was not included in the follow-up progress report, he had recently received a long letter from the author stating that he might consider $1 million to be sufficient compensation. So far, no information had been received from the State party.

13. Communication No. 453/1991, which was also not included in the follow-up progress report, involved two people born in the Netherlands who had become members of an oriental religion and had sought to have their names changed on the grounds that that might enable them to obtain a higher status in their new religion. The State party had sent a follow-up submission in Dutch, contending that current Dutch legislation sufficiently protected an author's right to change his name, and had added that "out of respect for the Committee", it would allow the authors to change their names and waive the respective fees. Although the reply had not been completely satisfactory, he proposed that that case be removed from the list.

14. With respect to communication No. 307/1988, the State party said that the Committee's views had been forwarded to the Judicial Committee of the Privy Council, the constitutional body entrusted with the exercise of the prerogative

of mercy or pardon or commutation of sentence, which would inform the Committee of its decision in due course. The Privy Council had not yet taken a decision.

15. Mr. BRUNI CELLI said that, in some cases, the Special Rapporteur on Follow-up had indicated that he would contact permanent missions in New York or Geneva and, in others, he had indicated that he would send a letter to the State party. He wondered whether there was any logic to that approach. In the case of many countries, including Zaire and Equatorial Guinea, there were special rapporteurs on human rights issues and the Committee should submit its information directly to them. There had been cases in which such rapporteurs had not been apprised of communications that the Committee had taken up with States parties.

16. Mr. POCAR, referring to communication No. 241/1987, said that, while the State party had not provided any follow-up information, the victim himself had in fact been the Prime Minister of the country for some time and should have implemented the Committee's view.

17. It would be advisable in future to include in the follow-up progress report cases in which States parties had complied with the Committee's views, since the inclusion of cases of compliance in the report might encourage other countries to comply. Currently, the annual report contained only one case of compliance. Although the list was currently restricted, it should be made public at a later date. In 1994, the Committee had decided that all follow-up activities should be public. The next annual report should include both those countries that had cooperated with the Committee and those that had not.

18. Mr. KLEIN said that he agreed with Mr. Pocar that it would be useful to include all cases in the report. It would also be useful to arrange the cases more systematically, namely, by country.

19. Mrs. HIGGINS said that, with reference to communication No. 196, it would be inappropriate to allow the State party concerned to delay its response any further. She suggested that the Committee should send notification to the State party that, if it received no response within a month, the matter would be included in its annual report.

20. Referring to communication No. 272, she suggested that the word "vague" in line 3 should be replaced by "general nature".

21. Mrs. EVATT noted a slight inconsistency between the two communications concerning Zaire. She assumed that the normal procedure for follow-up would call for a meeting with the Permanent Representative first, then a visit to the country. She agreed with Mr. Pocar that the annual report should contain a list of countries both in compliance with the Committee's views and not in compliance.

22. Mr. PRADO VALLEJO said that including in the annual report a list of countries in compliance and not in compliance would provide a means of exerting pressure on States. By the same token, not enough recognition was given to States which did comply. He strongly supported Mr. Bruni Celli's suggestion that coordination between special rapporteurs on human rights situations and the Committee should be enhanced.

23. Mrs. MEDINA QUIROGA noted that a number of cases on the list were even older than the one pointed out by Mrs. Higgins. She requested clarification of any differences in the types of cases that prevented all cases from receiving the same treatment. She agreed that the report should be made public and that the record should include a list of States in compliance.

24. Mr. EL-SHAFEI suggested that a uniform time-limit should be established, for instance three months, for the receipt of replies from States parties. He agreed that making the list public would help the Committee's work in the long run, and inquired whether it would be part of the annual report or a separate document.

25. Mr. BUERGENTHAL suggested that the list of countries not in compliance should be subdivided according to degree of delay. Countries should be informed of the steps that would be taken in following up the communications, including meetings with the Permanent Missions and visits to the country, and at what point the information on a country's non-compliance would be made public.

26. MR. ANDO agreed that uniform procedures were needed that would take into account time factors in the response. A distinction had previously been drawn between compliance and cooperation: a Government might have complied with the Committee's views but not responded to the Committee. Thus, it could be said to be in compliance with its obligations, while it had not cooperated with the Committee.

27. In the past, the Committee had avoided politicizing human rights issues. Therefore, it should be cautious in establishing contacts with the special rapporteurs on human rights situations, whose functions were expressly political.

28. Mr. BHAGWATI agreed with Mr. Buergenthal's suggestion. It would be useful for the Committee's follow-up procedures to be clarified for the benefit of States parties. It would be an encouragement to States parties if the Committee also expressed its satisfaction with their cooperation.

29. Mr. PRADO VALLEJO said that, in one specific case, a State party had refused to comply, in open defiance of the Committee's views, which was more serious than a case where a State party simply did not reply. The credibility of the Committee was at stake, and it might be helpful if the Special Rapporteur could make direct contact with that Government. The intervention of the High Commissioner for Human Rights could also be requested.

30. Mr. FRANCIS said that, in that narrative portion of the report, the purpose of publishing information on non-compliance with views on communications under the Optional Protocol should be explained, so that States parties had a clear understanding of the Committee's expectations. When a State party delayed action on a recommendation from the Committee involving material considerations, such a delay created additional hardship for the author of the communication. Thus, prompt response in such cases was doubly important.

31. Mr. POCAR said that he would like to see the information on compliance contained in an annex to the annual report, identifying the State and describing

the Committee's views, the answer received and the measures taken. The last category would be used only when the information was received directly from the author.

32. In his view, the distinction between cooperation and compliance should not be emphasized. The entire Optional Protocol system was based on State cooperation with the Committee. All human rights treaties were intended to be in implementation of the obligation of cooperation, as set out in Article 56 of the Charter of the United Nations. States could have differences of opinion with the Committee regarding its views, but not regarding cooperation with the Committee, which was a Charter obligation.

33. He felt some hesitation about calling on the intervention of the High Commissioner for Human Rights, which would seem to be using that office as a kind of executive of the Committee. It was absolutely within the powers of the High Commissioner to take action in a particular situation if he so desired, but no special link should be sought.

34. The CHAIRMAN, speaking in his personal capacity, said that if a State failed to cooperate with the Committee, that should be clearly stated. Also, it would be useful to have a table in the follow-up report showing what progress had been made with each communication.

35. Mr. FRANCIS emphasized that the High Commissioner for Human Rights had a role to play; however, the Committee should not appeal to the High Commissioner until the Special Rapporteur had exhausted all other avenues. Also, the Special Rapporteur, as part of his monitoring responsibilities, would be entitled to obtain access to certain places where the High Commissioner could not go.

36. Mr. KLEIN said that the High Commissioner would always have discretion as to which cases he took up, and the Committee could not dictate such choices to him. It should be left to the High Commissioner to do whatever he thought proper or useful in each case.

37. Mr. LALLAH recalled that the Committee had no enforcement powers; it could only attempt to persuade States to implement its views.

38. Mrs. EVATT said that the Committee should be responsible for its own follow-up activities. Any action the High Commissioner for Human Rights wished to take was entirely up to him, and should not be at the initiative of the Committee.

39. Mr. KRETZMER said it was of the utmost importance to avoid any impression of politicization of the work of the Committee, which needed to be seen as a professional, expert body.

40. Mr. MAVROMMATIS said that the follow-up progress report had been intended to help members of the Committee during the discussion of that subject; it was incomplete, and for internal use only. Inadequate secretariat support meant that the Committee could not carry out its follow-up responsibilities as well as it should.

41. Mr. PRADO VALLEJO wondered whether the Committee could have recourse to the High Commissioner for Human Rights in the case of Peru, because of that State's firm and final refusal to implement the Committee's recommendations.

42. Mr. de ZAYAS (Centre for Human Rights) said that although the Secretariat was fully committed to providing the best possible support to the Committee, it was often the case that personnel involved in the servicing of the Committee were also involved in other tasks, including missions; such situations often led to improvised solutions. In view of the great increase in the number of States parties to the Covenant and its optional protocols, it was imperative that more staff should be provided. It was for the members of the Committee to raise that issue with the relevant authorities in New York and Geneva.

43. Mr. SCHMIDT (Centre for Human Rights) said that it was hoped that the progress report could be updated for each of the Committee's sessions.

44. Referring to questions asked by members as to the reasons for different follow-up methods, he said that since some States did not have permanent missions in New York or in Geneva, it was necessary to deal directly with Governments in some cases.

45. Regarding the question of the possible involvement of the special rapporteurs of the Commission on Human Rights, he recalled that since the Committee was a quasi-judicial body, it had in the past been felt that it would be inappropriate to take account of the decisions of the Commission, whose decisions could be affected by political considerations.

46. Mr. BUERGENTHAL said that, although he understood the real difficulties involved in providing sufficient secretariat support to the Committee, it would be a mistake for the latter to structure its decisions and policies on the basis of such considerations.

The public part of the meeting rose at 12.25 p.m.